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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1942.

No.

SERIES "A" TRUST, AN EXPRESS TRUST, *Petitioner*,
v.
GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

This is a petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia involving a decision by that Court in the case of *Series "A" Trust, An Express Trust*, v. *Helvering, et al.*, No. 7868, wherein that Court affirmed a decision of the United States Board of Tax Appeals.

OPINIONS BELOW.

The opinion of the Court of Appeals (R. 78–81) is reported at — — App. D. C., — —, 126 F. (2d) 530, and the opinion of the Board of Tax Appeals (R. 28–35) is unreported.

JURISDICTION.

The opinion of the Court of Appeals was entered March 9, 1942 (R. 78), and the judgment of the Court was entered on the same day (R. 81). On March 24, 1942, petitioner filed a

timely petition for rehearing and modification of opinion and judgment (R. 82–84), which was denied by the Court on April 16, 1942 (R. 84). This petition is made pursuant to Section 240 (a) of the Judical Code (36 Stat. 1157, Sec. 240 (a)), as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U.S.C.A. Sec. 347), and within the three months period from the date of entry of final judgment in the lower court as provided by Section 8 of the Act of February 13, 1925, c. 229 (43 Stat. 940, 28 U. S.C.A. Sec. 350).

STATUTES INVOLVED.

The relevant statutes are set out in the appendix to this petition (pp. 7–8).

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The questions involved in this case are related to those in *Second Carey Trust* v. *Helvering*, and *Hare Trust* v. *Helvering*, now pending before this Court on petitions for certiorari at Nos. 135 and 136, respectively. The case involves petitioner's income and excess-profits tax liability for 1933 and 1934.

On June 10, 1933, the Southwest Company (an express trust) executed a Declaration of Trust creating Series A Trust, (R. 57–64) in which it declared itself trustee of a 40% interest in the working interest of the "Sinopoulo" oil and gas lease and of a $25,000.00 oil payment to be paid out of 9–1/6% of the oil produced from the "Turner" oil well. Both the Sinopoulo lease and the Turner well were in Oklahoma City, Okla. (R. 29, 57). The trustee also conveyed to petitioner its interest in a lease on two quarter sections of land in Oklahoma. This was a wildcat lease which expired through non-payment of rental. Neither petitioner nor its trustee paid any rent on the lease. (R. 29, 50, 57.)

The trust instrument provided for the division of the beneficial interest in petitioner's property into 2800 units, and all of the 2800 units were sold to the public (R. 51, 58).

There was one producing well on the Sinopoulo lease in 1933 and 1934. No additional wells were drilled thereon. The well was operated by Jacobs Oil Company and petitioner had no voice in the operation or management of the property. Its only function was to receive its share of the money from sales of oil and gas and distribute it to its beneficiaries. (R. 50–51.)

Petitioner received the $25,000.00 oil payment in full from the proceeds of the Turner well in 1933 and 1934 and distributed it to its unit holders. That exhausted petitioner's interest in the well. Petitioner did not operate the Turner well in 1933 or 1934. (R. 50, 54.)

The provisions of the trust instrument creating petitioner, and the powers of the trustees thereunder, are similar to those in the *Second Carey Trust* case (No. 135 on this Court's docket). The activities of petitioner and its trustees in 1933 and 1934 were also similar to those in the *Second Carey Trust* case.

Respondent, the Board, and the lower Court all held that petitioner is an association taxable as a corporation (R. 23, 33–34, 79).

The aforesaid properties were conveyed to petitioner for a consideration of $140,000.00 payable in installments (R. 74–75). The seller retained title to the property until all payments should be made, but petitioner was to acquire an equitable title to a proportionate part of the property as each payment was made. The income from the property was to be credited to petitioner on the seller's books as the oil was produced, but only the part of the income applicable to that portion of the lease for which petitioner had paid could be withdrawn by petitioner (R. 75–76). In addition to receiving the income to which it was entitled in 1933, petitioner received out of the amount entered on the seller's books a contribution to corpus in the amount of $27,579.21 (R. 42, 55–56). Said amount was not income but has not been excluded from income by respondent, the Board, or the lower Court. The issue was before the Board in Par. 4(b) of the petition (R. 8).

Petitioner's trustees filed income tax returns for 1933 and

1934 as a trust on Form 1040 (R. 13, 23). They did not file capital stock tax returns (required of corporations) because they believed petitioner was taxable as a trust and, therefore, not liable for capital stock taxes (R. 25, 32). After the Board's opinion was promulgated, holding petitioner taxable as a corporation, petitioner filed capital stock tax returns for 1933 and 1934 and paid the tax shown due thereon (R. 82–84).

Upon audit of petitioner's income tax returns respondent held that petitioner was an association taxable as a corporation, but he did not compute correctly the income and tax on that basis. He did not allow any exemption for a capital stock value in computing excess profits tax and did not allow the deductions for depreciation and cost depletion taken by petitioner on its returns, although the data to substantiate such deductions was available to him (R. 13–14, 24–25, 34, 69). Respondent did allow a depletion deduction on the percentage basis for 1933 and the Board did so for 1934 (R. 34). The law provides that there shall be allowed as deductions a reasonable amount for depreciation and for depletion and that the depletion deduction shall be upon the cost or percentage basis, whichever gives the greater deduction (App. p. 7).

The further question is whether the case should be remanded to the Board for rehearing to determine the deductions which are allowable to petitioner in the taxable years and the exemption (12½% of the declared capital stock value) to which it is entitled in computing its excess profits taxes for both years; and for further evidence regarding the non-taxability of the contribution to capital as aforesaid. The attorney representing petitioner at the time of the hearing proceeded, as in the *Second Carey Trust* case, upon the theory that the primary question was whether petitioner was taxable as a trust or a corporation; and that, after that question was decided, a further hearing would be held, if necessary, to determine the correct tax liability on the corporate basis. Accordingly, he did not submit at the hearing the evidence necessary to establish the deductions and the exemption from excess profits tax. At the conclusion of the hearing, he moved for a further

hearing to determine the correct tax liability if the Board should hold petitioner taxable as a corporation (R. 26–27). The Board decided the case on the record before it, even though the record was obviously incomplete and did not provide the facts on which to compute the income and tax liability for 1933 and 1934 correctly (R. 32–35). Petitioner filed a timely motion for rehearing, reconsideration, and further hearing, which the Board denied (R. 35–38).

The lower Court affirmed the Board, but held that if petitioner had filed a return and paid a capital stock tax, even though delinquent, the Board should have allowed the exemption or the case should be remanded for that purpose (R. 81). Petitioner then filed the petition for rehearing and modification of opinion and judgment (R. 82–84), in which it showed that the capital stock tax returns had been filed and the taxes due had been paid after the Board's opinion had been rendered, but before the Board's decision and before petition for review to the lower Court was filed. The Court denied the petition for rehearing and modification of opinion and judgment (R. 84).

QUESTIONS PRESENTED.

The questions presented are:

1. Is petitioner a trust and taxable as a trust, or is it an association taxable as a corporation?

2. Even if petitioner is held to be an association taxable as a corporation, should the case be remanded to the Board, when the tax liability as determined is obviously erroneous, for the purpose of determining petitioner's correct income tax and excess-profits tax liability for 1933 and 1934, with particular reference to the allowance of cost depletion, depreciation, and exemption for excess profits tax, and the exclusion from income of the amount contributed to capital in 1933?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT.

With regard to the question of whether petitioner is taxable as a trust or as a corporation, petitioner relies for allowance of

writ of certiorari upon the first, second, and third reasons for allowance of the writ set out in the petition for writ of certiorari in the case of *Second Carey Trust, et al.*, v. *Helvering, et al.*, No. 135 on this Court's docket.

On the second question of whether the case should be remanded for rehearing, petitioner relies upon the sixth reason for allowance of the petition for writ of certiorari in the *Second Carey Trust* case, and upon the following further reason:

The lower Court's decision conflicts with the decision of the Circuit Court of Appeals, Fifth Circuit, in *Del Mar Addition* v. *Com.*, 113 F. (2d) 410, where it was held that the exemption against excess profits tax provided by law (App. 8) of 12½% of the declared capital stock value is not dependent upon the timely filing of a capital stock tax return. It has been shown that petitioner filed capital stock tax returns for 1933 and 1934 which were not timely, but petitioner's failure to file them earlier was in good faith and because of its belief that it was taxable as a trust and not as an association. After the Board's opinion, and in compliance therewith, petitioner filed the returns and paid the capital stock taxes due thereon (R. 82–84). The Board and the lower Court have both refused petitioner the opportunity to prove these facts, although the Court recognized petitioner's right to an exemption against excess profits tax. The refusal of a rehearing results in manifest injustice under the facts of this case.

CONCLUSION.

For the foregoing reasons, the petition for writ of certiorari should be granted.

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APPENDIX.

REVENUE ACT OF 1932:

SEC. 23. DEDUCTIONS FROM GROSS INCOME (47 Stat. 179).

In computing net income there shall be allowed as deductions:

* * * * * * * * *

(1) DEPLETION.—In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary. * * * * (Sec. 23 (m) of the Revenue Act of 1934 (48 Stat. 688) is identical).

SEC. 114. BASIS FOR DEPRECIATION AND DEPLETION (47 Stat. 202).

* * * * * * * * *

(b) BASIS FOR DEPLETION.—

* * * * * * * * *

(3) PERCENTAGE DEPLETION FOR OIL AND GAS WELLS.—In the case of oil and gas wells the allowance for depletion shall be 27½ per centum of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph. (Section 114 (b) (3) of the Revenue Act of 1934 (48 Stat. 710) contains the same provisions.)

NATIONAL INDUSTRIAL RECOVERY ACT.

SEC. 215. (48 Stat. 207).

(a) For each year ending June 30 there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1 for each $1,000 of the adjusted declared value of its capital stock. (Section 701 (a) of the Revenue Act of 1934 (48 Stat. 796) is substantially the same.)

* * * * * * * * *

(f) For the first year ending June 30 in respect of which a tax is imposed by this section upon any corporation, the adjusted declared value shall be the value, as declared by the corporation in its first return under this section (which declaration of value can not be amended), as of the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section * * * *. (Section 701 (f) of the Revenue Act of 1934 (48 Stat. 796) contains the identical provision.)

(g) The terms used in this section shall have the same meaning as when used in the Revenue Act of 1932.

SEC. 216. (48 Stat. 208.)

(a) There is hereby imposed upon the net income of every corporation, for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under Section 215, an excess-profits tax equivalent to 5 per centum of such por tion of its net income for such income-tax taxable year as is in excess of 12½ per centum of the adjusted declared value of its capital stock * * * as of the close of the preceding income-tax taxable year * * * determined as provided in Section 215. The terms used in this section shall have the same meaning as when used in the Revenue Act of 1932. (Section 702 of the Revenue Act of 1934 (48 Stat. 770) contains substantially the same provision.)

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 206

SERIES "A" TRUST, AN EXPRESS TRUST, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 28–35) is unreported. The opinion of the Court of Appeals (R. 78–81) is reported in 126 F. (2d) 530.

JURISDICTION

The judgment of the Court of Appeals was entered March 9, 1942 (R. 81). A petition for rehearing and modification of the opinion and judgment of the Court of Appeals was denied April 16, 1942, (R. 84). The petition for a writ of certiorari was

filed July 3, 1942. Jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the taxpayer trust during the years 1933 and 1934 was an association within the meaning of section 1111 (a) (2) of the Revenue Act of 1932 and section 801 (a) (2) of the Revenue Act of 1934, taxable as a corporation.

2. If so, whether the Board erred in denying taxpayer's motion—filed after the Board had promulgated its findings of fact and opinion upon the issues tried before it—for further hearing in order that taxpayer might introduce proof upon issues suggested by taxpayer's pleadings, and upon which the taxpayer might have but did not offer proof at the trial.

3. Whether the Court of Appeals erred in denying taxpayer's motion—filed after the Court of Appeals had entered its judgment—asking a rehearing in the Court of Appeals and modification of the court's opinion and judgment so as to secure a remand to the Board with directions to consider evidence as to whether taxpayer had filed capital stock tax returns and paid capital stock taxes for the years 1933 and 1934 *after* the Board promulgated its findings and opinion in this case, and if the filing of such returns should be proved then to redetermine taxpayer's excess profits tax liability for the years 1933 and 1934 by allowing tax-

payer a credit of 12½ percent of whatever 1933 and 1934 values taxpayer had thus belatedly declared for its stock.

STATUTES AND REGULATIONS INVOLVED

The same statutes and regulations are involved here as in the companion cases of *Second Carey Trust* v. *Helvering,* No. 135, and *Hare Trust* v. *Helvering,* No. 136. The provisions of the 1934 Act and regulations are set forth in the Appendix to our brief in the *Second Carey Trust* case. The corresponding provisions of the Revenue Act of 1932, applicable to the taxable year 1933, are for present purposes identical with the provisions of the 1934 act. In addition, the following statutory provisions are relevant in this case:

National Industrial Recovery Act, c. 90, 48 Stat. 195:

> SEC. 215. (a) For each year ending June 30 there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1 for each $1,000 of the adjusted declared value of its capital stock.
>
> * * * * *
>
> (d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of busi-

ness or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such return shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. * * * The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.

* * * * *

(f) For the first year ending June 30 in respect of which a tax is imposed by this section upon any corporation, the adjusted declared value shall be the value, as declared by the corporation in its first return under this section (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section * * *.

* * * * *

SEC. 216. (a) There is hereby imposed upon the net income of every corporation, for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under section 215, an

> excess-profits tax equivalent to 5 per centum of such portion of its net income for such income-tax taxable year as is in excess of 12½ per centum of the adjusted declared value of its capital stock * * * as of the close of the preceding income-tax taxable year * * * determined as provided in section 215. The terms used in this section shall have the same meaning as when used in the Revenue Act of 1932.
>
> * * * * *

The corresponding provisions of the Revenue Act of 1934 (sections 701 and 702) are for present purposes the same as the foregoing provisions of the National Industrial Recovery Act.

STATEMENT

The relevant facts, including those found by the Board (R. 28–32), may be summarized as follows:

The organization, powers, and operations of the taxpayer.—In an agreement executed June 3, 1933, the Southwest Company, a so-called "Express Trust", by its five individual trustees, agreed to buy from the Jacob Oil Corporation an undivided interest of approximately 40 percent of the working interest in an oil and gas lease (known as the Sinopoulo lease) in Oklahoma City together with appurtenant equipment and the right to receive $25,000 payable out of 9⅛ percent of the working interest oil from another well (known as the Turner well) located on a nearby leasehold (Ex. 6, R. 74–77). The stipulated consideration for the

properties was $140,000, payable in installments (R. 29, 74, 75).

By a declaration of trust dated June 10, 1933, the Southwest Company and its trustees created the taxpayer, Series "A" Trust (Ex. 1, R. 57–64). This instrument recited the making of the contract with the Jacob Oil Corporation, the acquisition by Southwest Company of an oil and gas lease on 320 acres of land in Custer County, Oklahoma, and that the purpose and intent of the Southwest Company and its trustees had been to hold the contract and the properties, when conveyed to Southwest, in a separate trust apart from the other property of the Southwest Company and for the owners of the beneficial interest to be issued in the new trust (R. 57). The trust instrument (Ex. 1) provided, *inter alia,* that the trust should embrace not only the interest in the two Oklahoma City leases and the Custer County lease but all other property thereafter conveyed to the Series "A" Trust and that the trustee (Southwest Company) should, at its option, have the right to acquire and hold other property for the benefit of the trust subject to the terms of the trust instrument (R. 29, 58). The trustee was authorized "to hold, handle, operate and manage" the trust property (R. 59), all business to be transacted and documents and papers executed in the name of Series "A" Trust (R.29–30, 58). The trust capital was represented by 2,800 nonassessable units of beneficial interest, evidenced

by certificates which were transferable only on the books of the trust[1] (R. 30, 58, 59).

The parties are agreed that the other provisions of the trust instrument creating the taxpayer are similar to those of the trust instrument involved in *Second Carey Trust* v. *Helvering* (No. 135, October Term, 1942) and that the activities of the taxpayer (and its trustee) in 1933 and 1934 were similar to those of the taxpayer in the *Second Carey Trust* case (see Pet. 3). From time to time distributions were made to the holders of the certificates of interest from taxpayer's receipts from oil and gas and from the $25,000 oil payment (R. 31, 50).

The returns filed, the issues before the Board, and the petitions for rehearing.—Taxpayer filed its income tax returns for the years 1933 and 1934 as a trust on form 1040. It did not file capital stock tax returns. The income tax return for each year showed a loss. Among the deductions taken from gross income, on each return, was a deduction for distributions to certificate holders and a deduction for depletion, or for depletion and depreciation. The Commissioner determined a deficiency against the taxpayer for each year; treating it as an association taxable as a corporation, he disallowed the deductions for distributions to certificate holders upon the ground that they were dividends; and he

[1] The record does not disclose the price which taxpayer paid for its several properties, or the price at which it sold its certificates.

allowed percentage depletion for 1933 but no depletion or depreciation for 1934 (R. 31-32). The Commissioner computed the excess profits tax on the income as determined by him without any allowance of 12½ per cent of a declared value of taxpayer's capital stock (R. 32).

Taxpayer tried its case to the Board upon the issue whether it was an association taxable as a corporation or was a trust the distributable income of which was taxable to its beneficiaries (see R. 33). It offered no evidence to show that it was entitled to any depreciation, and the Board observed (R. 34) that there were no facts of record upon which it could determine depreciation. As the Commissioner had allowed taxpayer percentage depletion for 1933 (in the amount of 27½ percent of gross income) and taxpayer had offered no evidence to show error in that allowance, the Board upheld the Commissioner's determination on that point. The Board then allowed taxpayer percentage depletion for 1934 (R. 34). As taxpayer had not proved that it had filed a capital stock tax return or that it had declared a capital value and paid a capital stock tax, the Board denied taxpayer a credit for value of capital stock in the computation of its excess profits tax (R. 35).

Twenty-eight days after the Board promulgated its findings and opinion, taxpayer filed a "Motion for Rehearing, Re-consideration, and Further Hearing", asking for reconsideration of the deci-

sion that taxpayer was an association and, in the alternative, if the Board adhered to that portion of its decision, for a rehearing in order that taxpayer might present evidence upon the alternative issues raised by taxpayer's petition with respect to depletion, depreciation, and valuation of taxpayer's capital stock for excess profits tax purposes, upon which taxpayer had submitted no proof at the trial (R. 35–38). The Board denied this motion May 9, 1940 (R. 35). On October 7, 1940, the Board entered its decision, pursuant to its findings of fact and opinion, in taxpayer's 1933 case (R. 38), and on October 10, 1940, its decision in taxpayer's 1934 case (R. 39).

The taxpayer alleged as error in the Court of Appeals (R. 45–47): (a) The decision of the Board that the taxpayer was an association taxable as a corporation during the years 1933 and 1934; (b) the refusal by the Board to receive in evidence a revenue agent's report on taxpayer for the year 1933;[2] (c) the refusal of the Board to grant a rehearing to permit taxpayer to present evidence upon the alternative issues with respect to depletion, depreciation, and valuation of taxpayer's capital stock for excess profits tax purposes, which taxpayer had raised in its petition to the Board but upon which taxpayer had submitted no evidence at

[2] The report had been excluded because the Commissioner had not accepted the revenue agent's report nor followed it in determining the 1933 deficiency (R. 52; cf. R. 12–14).

the trial; (d) the failure of the Board to grant a rehearing to permit taxpayer to prove that $27,579 of taxpayer's 1933 receipts were not income but a contribution to its capital.[3]

The Court of Appeals affirmed the decision of the Board (R. 78–81). Fifteen days thereafter counsel for taxpayer filed with the Court of Appeals a "Petition for Rehearing and Modification of Opinion and Judgment", representing to the Court of Appeals that slightly more than four months after the Board promulgated its opinion in this case the taxpayer had filed capital stock tax returns for the years ending June 30, 1933, and June 30, 1934, respectively, declaring a capital stock value of $295,000 in its return for the first year and a capital stock value of $400,000 in its return for its second year, and had paid its capital stock tax on the values thus reported. The petition then prayed the Court of Appeals to rehear the case and modify its opinion and judgment so as to remand the case to the Board for the purpose of hearing evidence concerning the values thus declared in taxpayer's belated capital stock returns and concerning the capital stock taxes paid pursuant to such returns, and for a redetermination accordingly of taxpayer's excess profits taxes for the calendar years 1933 and 1934 (R. 82–84). The

[3] By its assignment of error No. 5 in the Court of Appeals (R. 45) taxpayer for the first time in this case asserted that $27,579.21 of its 1933 receipts were a contribution to its capital and not income.

Court of Appeals denied taxpayer's petition on April 16, 1942 (R. 84).

ARGUMENT

The Court of Appeals correctly affirmed the decision of the Board. Since all but one of the questions presented here are substantially identical with questions presented in the companion case, *Second Carey Trust* v. *Helvering,* No. 135, October Term, 1942, the Court is respectfully referred to the Government's brief in opposition in that case for a discussion of the issues common to the two cases.

The one question raised here which is not raised in *Second Carey Trust* v. *Helvering* is whether the Court of Appeals committed reversible error in denying taxpayer's petition for rehearing and modification of the court's opinion and judgment. In view of the circumstances, the court properly denied the petition. Cf. *General Utilities Co.* v. *Helvering,* 296 U. S. 200, 206–207; *Bankers Pocahontas Coal Co.* v. *Burnet,* 287 U. S. 308, 312–313, and other cases cited therewith in the Government's brief in opposition in the *Second Carey Trust* case, *supra,* pp. 15–16. *Del Mar Addition* v. *Commissioner,* 113 F. (2d) 410 (C. C. A. 5), is not authority for the taxpayer's view that the Court of Appeals in this case should have granted the petition for rehearing since the capital stock tax return in the *Del Mar* case was filed *before* the trial of that taxpayer's income and excess profits tax case before the Board, and the filing of the return

and its contents were there proved to the Board. Here, on the other hand, petitioner sought to inject into the case events which occurred after the Board's final decision.

CONCLUSION

The decision of the Court of Appeals is in accord with the applicable decisions of this Court, and no conflict of decisions is presented. It is therefore respectfully submitted that the petition should be denied.

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JULY 1942.

U. S. GOVERNMENT PRINTING OFFICE: 1942